IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 10505 OF 2005

Date of Decision: 27.09.2006

Gurmail Singh ... Petitioner

Versus

State of Punjab and others. .. Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. D.S. Patwalia, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Addl. Advocate General, Punjab,
for the respondents.

S.D. ANAND, J.

Factual background:

1. The petitioner was recruited, as a Constable in the Punjab Armed Police, on 1.7.1975 and was posted in the 17th Battalion. On the setting up of Police Dog Squads in the State of Punjab, the petitioner exercised his option to go over to that Squad. On completion of one year training course in dog handling at the B.S.F. Academy at Takanpur, Gawalior, he was promoted as Head Constable on 6.2.1981. On the transfer of the Dog Squads to the District Police, the petitioner was reverted to the post of Constable in the year 1984. Again, in the year 1985, his name was entered in List-II and he was promoted as Head Constable in the year 1986. He was confirmed as Head Constable with effect from 1.7.1991, vide order dated 17.11.1999 (Annexure P/3).

2. On 28.4.1994, the petitioner was promoted as Assistant Sub Inspector in his own rank and pay (Annexure P/4). Thereafter, he earned regular promotion to the rank of Assistant Sub Inspector vide order dated

28.7.1999 (Annexure P/5). He functioned as Assistant Sub Inspector for more than a decade.

3. It transpired thereafter that three posts of Assistant Sub Inspectors (which had been created vide Annexure P/1) had actually been abolished by the State Government vide order dated 14.1.1985. In the light thereof , a notice (Annexure P/6) was issued to the petitioner to show cause why he should not be reverted. He furnished his response thereto (Annexure P/8). However, on consideration thereof and after affording opportunity of a hearing to the petitioner, the competent authority ordered his reversion vide order dated 6.7.2005 (Annexure P/9).

4. The petitioner filed the present writ petition to obtain the invalidation of the impugned reversion order. The plea, in support thereof, is that the impugned reversion is bad inasmuch as he has served in the post of Assistant Sub Inspector for about 11 years and his service record is unblemished. A plea, raised in the alternative, is that a number of posts including those of Assistant Sub Inspectors have been created by the I.G.P. vide standing order No.1 of 2002 and it is rather appropriate that the petitioner is allowed to continue as Assistant Sub Inspector against the posts (29 in number) sanctioned thereby.

5. The respondents challenged the very maintainability of the present petition, on an averment that the petitioner has not availed of the other equal efficacious remedy in the form of appeal/revision/mercy petition before filing the writ plea before this Court. It was averred that the State Government had no option but to revoke the promotion of the petitioner, the moment it came to notice that the posts (against one of which the petitioner had been promoted) had been abolished by the Government vide Memo No.

4/40/84-3H(1)/835 dated 14.1.1985. It was further averred that the petitioner would be given promotion as Assistant Sub Inspector on his turn and seniority after he passes the required course and his name is brought on list `D-I'. The plea raised by the petitioner that he was confirmed as Head Constable was not denied. Qua standing order No.1 of 2002 regarding the creation of posts of Assistant Sub Inspectors (Annexure P/10), it was averred that it only projects a proposal which has not yet acquired validity for want of approval by the State Government. As regards the promotion under the ORP, it was pleaded that the promotion aforesaid merged into the regular promotion ordered vide Annexure P/1.

6. We have heard Mr. D.S. Patwalia, Advocate, learned counsel for the petitioner and Mr. Ashok Aggarwal, Additional Advocate General, Punjab, for the respondents.

7. It was submitted by the learned counsel for the petitioner that the respondents had no justification to grant the impugned order in view of the fact that they had allowed him to function in the promotion post for a fairly long period and he cannot be made to suffer for no fault of his. The plea raised thereby is that the respondents cannot take advantage of their own wrong inasmuch as it is they only who allowed his continuation as Assistant Sub Inspector, unmindful of the transpired fact of abolition of posts.

8. We do not agree with the proposition advocated on behalf of the petitioner. The present is a pure and simple case in which the fact of abolition of the relevant post did not come to the notice of the competent authority at the time it promoted the petitioner to the post of an Assistant Sub Inspector police. The moment the competent authority became

cognizant of the correct facts, it proceeded to issue a show cause notice to the petitioner and also afforded a personal hearing to him. The mere continuation of the petitioner on a post which had already been abolished would not, by any stretch of interpretation, clothe him with an authority to plead for compulsive continuation on that very post.

9. The learned counsel for the petitioner, then, assailed the impugned order by arguing that the standing order (Annexure P/10) ordering creation of the posts of relevant category having come into play, it is legally indefensible for the respondents to disallow the petitioner from staying put as Assistant Sub Inspector at least against the vacancies created thereby. In response to an objection raised on behalf of the respondents that the standing order aforesaid can, at best, be taken to be a projected proposal, which would come into force only on approval by the State Government, it was argued that the standing order aforesaid is valid on its own, even though it would require the ultimate approval of the State Government. Learned counsel argued that there is no requirement that the prior permission of the State Government was required for issuance of a standing order of the indicated category. In order to buttress the plea regarding distinction between a matter requiring approval and (prior) permission, the learned counsel placed implicit reliance upon **The Lord Krishna Textile Mills versus Its Workmen, AIR 1961 Supreme Court 860, Life Insurance Corporation of India versus Escorts Ltd and others, AIR 1986 Supreme Court 1370 and U.P. Avas Evam Vikas Parishad and another versus Friends Co-op. Housing Society Ltd. And another, AIR 1996 Supreme Court 114**.

10. The learned Additional Advocate General, Punjab, appearing on behalf of the respondents, contested the plea aforesaid by arguing that the

standing order would not attain validity till approval by the State Government inasmuch as it even does not purport to have been issued with the concurrence of the Finance Department. In support of the plea that the creation of a post would compulsorily require the concurrence of the Finance Department, the learned counsel invited our attention to Annexure P/7 vide which certain posts of Head Constables and Kennelman were created and there is a precise indication in para 9 and 10 thereof that the expenditure involved would be met from the grant under head "255-Police" Demand No.11 for the year 1984-85 and that it has been issued with the concurrence of Finance Department as conveyed vide their U.O. No. 1/1/46/84-FGI dated 31.12.84. It was further submitted that the judicial pronouncements relied upon by the learned counsel for the petitioner are inapplicable to the facts and circumstances of the present case.

11. The plea raised on behalf of the petitioner does not merit acceptance. In the scheme of things, the creation of every post under the Government would require concurrence of the Finance Department. Every order directing creation of the posts must pointedly indicate the head under which the expenditure involved would be met and it must also indicate that the concurrence of the Finance Department had been obtained. That would be the obvious requirement in accord with the financial discipline of the Government. This inferential observation would appear to stand buttressed by a perusal of Annexure P/7, Clause 9 and 10 whereof stand referred to in para 8 of this order. Clause 9 and 10 of Annexure P/7 are reproduced as under for appropriate appreciation of the controversy:-

> "9. The expenditure involved should be met from the grant under head "255-Police" Demand No.11 for the year 1984-85.

10. This issues with the concurrence of Finance Department as conveyed vide their U.O. No. 1/1/46/84-FGI dated 31.12.84."

12. Apart therefrom, it may be noticed that there is a categorical announcement in Annexure P/10 that "this order shall come into force on the date of its issue by the competent authority." There is not an averment by the learned counsel for the petitioner that this standing order has been issued by the competent authority. Even Annexure P/10 itself does not indicate its issuance by the competent authority. Further, our attention has not been invited to any material which could indicate that a standing order of the indicated category (i.e. relating to creation of a post) has an enforceable validity of its own.

13. The reliance placed by the petitioner upon The Lord Krishna Textile Mills's case, Life Insurance Corporation of India's case and U.P. Avas Evam Vikas Parishad's case (supra) is misconceived inasmuch as those were based upon their peculiar facts and circumstances which have no relevance to the present case. The Lord Krishna Textile Mills's case (supra) was based upon the following facts:-

14. Five workmen in the employment of the Mill aforesaid were dismissed on account of proven misconduct. At that point of time, an industrial dispute in respect of bonus for the relevant year was pending before the Industrial Tribunal (Textile) U.P. Allahabad. The Management filed an application before the Industrial Tribunal for according approval to the dismissal of the workman aforesaid. The Tribunal dismissed the application and directed the reinstatement of the workmen to their original job with effect from the dates on which they were suspended, with

continuity of service and back wages. Section 33 (1) of the Industrial Disputes Act provides that during the pendency of such industrial proceedings, no employer shall (a) in regard to any matter connected with the dispute alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of that proceedings, or (b) for any misconduct connected with the dispute discharge or punish whether by dismissal or otherwise any workman connected with such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Section 33 (2) deals with the alterations in the conditions of service as well as discharge or dismissal of workmen concerned in any pending dispute where such alteration or discharge or dismissal is in regard to a matter not connected with the said pending dispute. It is, thus, evident that whereas in cases falling under Section 33(1), no action can be taken by the employer unless he has obtained previously the express permission of the appropriate authority in writing, in cases falling under sub-section (2) the employer is required to satisfy the specified conditions but he need not necessarily obtain the previous consent in writing before he takes any action. The facts involved in that case have no relate-ability to the facts of the present case inasmuch as it has been found in the present case that the concurrence of the competent authority/Finance Department has not been obtained in the matter of Annexure P/10.

14. In Life Insurance Corporation of India's case (supra) as well, the Hon'ble Apex Court interpreted the distinction between the obtaining of a permission and approval. In U.P. Avas Evam Vikas Parishad's case (supra) too, the Hon'ble Apex Court delineated difference between approval and

permission. All the aforesaid judicial pronouncements have no applicability to the case in hand at all.

15. The position that, thus, emerges from the above discussion is that the petitioner was initially promoted as Assistant Sub Inspector on 28.4.1994. It transpired subsequently that the relevant post had already been abolished vide State Government Memo No. 4/40/84-3H(1)/835 dated 14.1.1985, though he continued to hold that post under mistaken facts. Obviously, the Competent Authority was, at the time of making of the impugned promotion, unmindful of the fact that the post under reference stood abolished. The moment error aforesaid came to the notice of the competent authority, a show cause notice was served upon the petitioner in the context. A personal hearing was also afforded to him. It was thereafter only that the reversion of the petitioner was ordered on account of the noticed abolition of the relevant post. The approach of the competent authority in the relevant behalf cannot be faulted on any valid score as the impugned reversion proceeds on account of the abolition itself of the post against which the petitioner had been promoted. The mere fact of his continuation against the abolished post on account of inadvertence or non-noticing of the abolition cannot validate petitioner's plea for entitlement to continue to hold the aforementioned post.

16. Both the submissions put forward on behalf of the petitioner having been negatived, the petition would stand dismissed.

(S.D. ANAND)
JUDGE

September 27, 2006
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(J.S. KHEHAR)
JUDGE